

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Lane, Suite 101
San Luis Obispo, California 93401**

COMPLAINT NO. R3-2004-0126

**MANDATORY PENALTY
IN THE MATTER OF
CITY OF SAN LUIS OBISPO WATER RECLAMATION FACILITY
SAN LUIS OBISPO COUNTY**

This complaint to assess Mandatory Minimum Penalties pursuant to Water Code section 13385(h) and (i) is issued to the City of San Luis Obispo Water Reclamation Facility (Discharger), based on a finding of violations of Waste Discharge Requirements Order Nos. 95-48 and R3-2002-0043, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0049224.

The Executive Officer finds the following:

1. On October 13, 1995, the Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted *Waste Discharge Requirements Order No. 95-48, NPDES Permit No. CA00492246, for City of San Luis Obispo's Water Reclamation Facility, San Luis Obispo County* (Order No. 95-48). On May 31, 2002, the Regional Board adopted *Waste Discharge Order No. R3-2002-0043, NPDES Permit No. CA00492246, for City of San Luis Obispo Water Reclamation Facility, San Luis Obispo County* (Order No. R3-2002-0043). Order No. R3-2002-0043 replaced Order No. 95-48.
2. California Water Code section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
3. California Water Code section 13385(h)(2) provides a serious violation occurs if the discharge exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more.
4. California Water Code section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in a consecutive six-month period:
 - a) Exceeds a waste discharge requirement effluent limitation;
 - b) Fails to file a report pursuant to Section 13260;
 - c) Files an incomplete report pursuant to Section 13260; or
 - d) Exceeds a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. California Water Code section 13385(l) states:

“(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the...regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).”

6. California Water Code section 13385(f)(2)(A) & (B) states:

“...a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in a violation of more than one effluent limitation and the violation continues for more than one day, if...the discharger demonstrates all of the following:

- i. The upset was not caused by wastewater treatment plant operator error and was not due to discharger negligence;
- ii. But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day;
- iii. The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.
- iv. The discharger is implementing an approved pretreatment program, if so required by federal or state law.

...[the single operational upset provision] only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.”

7. The Discharger is implementing an approved pretreatment program.

8. Order No. 95-48 includes in part the following Effluent Limitations:

Effluent Limitation No. 2:

“Effluent shall not exceed the following limits:

| Constituent | Unit of Measurement | Daily Maximum |
|------------------------|---------------------|----------------------------|
| Total Dissolved Solids | mg/L | Water Supply + 450 mg/L |

Effluent Limitation No. 4:

“The discharge shall be continuously disinfected so that the effluent contains a median most probable number (MPN) of coliform organisms of less than 2.2 per 100 milliliters. The median is to be based on the results of the last seven samples for which analyses have been completed. No single sample shall exceed 240 MPN per 100 mL.”

Effluent Limitation No. 11:

“The discharge shall contain no chlorine residual.”

9. Order No. R3-2002-0043 includes in part the following Effluent Limitations:

Effluent Limitation No. 2:

“...effluent shall not exceed the following limits:

| Constituent | Units | Monthly (30-Day) Average |
|--|-------|--------------------------|
| Biochemical Oxygen Demand (BOD), 5-day | mg/L | 10 |
| Total Suspended Solids | mg/L | 10 |

Effluent Limitation No. 4.e:

“The median number of fecal coliform organisms in the effluent shall not exceed 2.2 MPN/100 milliliters (mL) of wastewater or the median number of total coliform organisms in effluent shall not exceed 23 MPN/100 mL of wastewater. Coliform numbers shall be determined by the results of the bacteriological analyses for the last 7 days on which samples were taken. The maximum number of total coliform organisms in any sample shall not exceed 240 MPN/100 mL.”

Effluent Limitation No. 4.e:

“Until December 31, 2004, compliance determinations for total chlorine residual shall be based on 99% compliance. To determine 99% compliance with effluent limitations for total chlorine residual, the following conditions shall be satisfied:

- i. The total time during which the total chlorine residual values are above 0.1 mg/L (instantaneous maximum value) shall not exceed 7 hours and 26 minutes in any calendar month.
- ii. No individual excursion from 0.1 mg/L shall exceed 30 minutes; and
- iii. No individual excursion shall exceed 2 mg/L.”

10. Total Dissolved Solids, BOD, and Total Suspended Solids are Group I Pollutants. Chlorine Residual is a Group II Pollutant. Total Coliform Organisms is neither a Group I or Group II Pollutant.
11. Effluent containing constituent values that are greater than serious thresholds (limit + 40% for Group I pollutants, limit + 20% for Group II pollutants) are serious violations. Total Coliform Organisms is neither a Group I or Group II Pollutant, therefore it has no serious threshold.
12. Effluent containing constituent concentrations that are less than the serious threshold but greater than the permit limits, are chronic violations.
13. According to monitoring reports submitted by the Discharger, the Discharger committed the following violations of Effluent Limitations of Order No. 95-48 and Order No. R3-2002-0043 in the period September 1, 2001 through March 31, 2004:

| No. | Violation Date | Constituent | Permitted Limit | Reported Value | Violation Type |
|-----|----------------|------------------------|---|----------------|----------------------|
| 1 | 9/2/01 | Chlorine Residual | No measurable residual | 0.23 mg/L | Chronic |
| 2 | 10/1/01 | Chlorine Residual | No measurable residual | 0.4 mg/L | Chronic |
| 3 | 10/12/01 | Chlorine Residual | No measurable residual | 0.2 mg/L | Chronic |
| 4 | 11/28/01 | Total Dissolved Solids | Water Supply (250 mg/L) plus 450 mg/L (=700 mg/L) | 710 mg/L | Chronic ¹ |

¹ Violation subject to mandatory minimum penalty

| No. | Violation Date | Constituent | Permitted Limit | Reported Value | Violation Type |
|-----|----------------|-------------------------|--|---------------------------|----------------------|
| 5 | 11/29/01 | Total Coliform | 2.2 MPN/100mL | 4.8 MPN/100 mL | Chronic ¹ |
| 6 | 1/7/02 | Chlorine Residual | No measurable residual | 0.16 mg/L | Chronic ¹ |
| 7 | 1/31/02 | Total Dissolved Solids | Water Supply (360 mg/L) plus 450 mg/L (=810 mg/L) | 850 mg/L | Chronic ¹ |
| 8 | 2/6/02 | Chlorine Residual | No measurable residual | 1.6 mg/L | Chronic ¹ |
| 9 | 1/21/04 | Chlorine Residual | No individual excursion above 0.1 mg/L shall exceed 30 minutes | 0.58 mg/L over 69 minutes | Serious ¹ |
| 10 | 2/29/04 | Total Suspended Solids | 10 mg/L 30-Day Average | 10.7 mg/L | Chronic |
| 11 | 2/29/04 | BOD | 10 mg/L 30-Day Average | 11 mg/L | Chronic |
| 12 | 3/8/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 240 MPN/100 mL | Chronic ² |
| 13 | 3/9/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 240 MPN/100 mL | Chronic ² |
| 14 | 3/10/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 175 MPN/100 mL | Chronic ² |
| 15 | 3/13/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 175 MPN/100 mL | Chronic ² |
| 16 | 3/14/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 185 MPN/100 mL | Chronic ² |
| 17 | 3/16/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 240 MPN/100 mL | Chronic ² |
| 18 | 3/17/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 160 MPN/100 mL | Chronic ² |
| 19 | 3/17/04 | Total Coliform | 240 MPN/100 mL Maximum | 400 MPN/100 mL | Chronic ² |
| 20 | 3/18/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 315 MPN/100 mL | Chronic ² |
| 21 | 3/19/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 80 MPN/100 mL | Chronic ² |
| 22 | 3/20/04 | Total Coliform | 23 MPN/100 mL 7-Day Median | 240 MPN/100 mL | Chronic ² |
| 23 | 3/22/04 | Total Coliform | 240 MPN/100 mL Maximum | 315 MPN/100 mL | Chronic ² |
| 24 | 3/27/04 | Total Chlorine Residual | 2 mg/L Maximum | >2.2 mg/L | Chronic ² |

14. According to Finding No. 13, the Discharger committed eight (8) chronic violations in the period September 1, 2001 through February 6, 2002. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each chronic violation, not counting the first three, occurring in a consecutive six-month period. The mandatory minimum penalty for these chronic violations ($8 - 3 = 5 \times \$3,000$) is fifteen thousand dollars (\$15,000).

15. Violations listed as No. 12 through 24 in Finding No. 13 occurred due to a single operational upset of the Discharger's biological treatment process. The Discharger has demonstrated operator error or negligence

² Violation subject to single operational upset provision.

did not cause the upset, the violations would not have occurred nor continued for more than one day but for the upset, and all reasonable and immediately feasible actions to reduce noncompliance were taken. In accordance with California Water Code section 13385(f)(2), violations listed as No. 12 through 24 are considered a single chronic violation for the purpose of assessing penalties.

16. According to Finding No. 13, the Discharger committed one (1) serious violation in the period January 21, 2004 through March 31, 2004. The amount of the mandatory penalty for the serious violation is $(1 \times \$3,000)$ three thousand dollars (\$3,000). The Discharger also committed fifteen (15) chronic violations in the period January 21, 2004 through March 31, 2004. However, violations listed as No. 12 through 24 are considered a single chronic violation for the purpose of assessing penalties. California Water Code section 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each chronic violation, not counting the first three³, occurring in a consecutive six-month period. The mandatory minimum penalty for chronic violations in the period January 21, 2004 through March 31, 2004 is $(4 - 3 = 1 \times \$3,000)$ three thousand dollars (\$3,000).
17. The total amount of the mandatory penalty for violations of effluent limitations occurring in the period September 1, 2001 through March 31, 2004 $(\$15,000 + \$3,000 + \$3,000)$ is twenty-one thousand dollars (\$21,000).

THE CITY OF SAN LUIS OBISPO IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of twenty-one thousand dollars (\$21,000).
2. The Regional Board shall hold a public hearing on September 10, 2004, unless the Discharger agrees to waive its right to a public hearing by filling out, signing, and submitting the enclosed "Waiver of Hearing." If the Discharger chooses not to waive its right to a public hearing, the Regional Board may proceed with the scheduled public hearing and consider testimony received from interested persons during the public hearing and decide whether to accept the amount of Mandatory Penalty proposed by the Executive Officer. The Regional Board may also decide to continue the matter to a future hearing, direct the Executive Officer to reissue the Complaint to propose additional penalties under California Water Code section 13385(c) and (e), or refer the matter to the State Attorney General. The public hearing is scheduled at the regularly scheduled Regional Board meeting on September 10, 2004, at the Regional Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The meeting is scheduled to begin at 8:30 a.m.; however, no specific time has been set for consideration of this item.

If you have questions regarding this matter, please direct them to Regional Board staff, **Matt Thompson, at (805) 549-3159**, or Regional Board Counsel, Lori Okun, at (916) 341-5165.

Roger W. Briggs
Executive Officer

Date

³ Serious violations also count as chronic violations for the purpose of enumerating chronic violations.

**PROCEDURAL INFORMATION
FOR
MANDATORY MINIMUM PENALTY COMPLAINT
PUBLIC HEARING AND PAYMENT**

WAIVER OF PUBLIC HEARING

You may waive your right to a public hearing. If you wish to waive your right to a public hearing, a duly authorized person⁴ must check, sign, and submit the following *Waiver of the Right to a Public Hearing* form and pay the mandatory minimum penalty amount specified in the Complaint **no later than August 14, 2004, 5:00 P.M.** Please follow the payment instructions below.

If you choose to waive your right to a public hearing, and if full payment and a signed *Waiver of the Right to a Public Hearing* form are received before the hearing, the hearing will not be held, and the violation will be settled. If full payment and a signed *Waiver of the Right to a Public Hearing* form are not received, the matter will be placed on the Regional Board's agenda for a hearing as stated below.

If you do not waive your right to a public hearing, the Executive Officer will present an Order to the Regional Board for the amount proposed in this Complaint at the Regional Board meeting on September 10, 2004, at the Regional Board Conference Room, 895 Aerovista Place, Suite 101, San Luis Obispo, California. The Regional Board will proceed with the scheduled hearing, consider testimony received from interested persons during the hearing, and decide whether to accept the amount of the mandatory minimum penalty proposed by the Executive Officer, or direct the Executive Officer to reissue the complaint alleging increased liability pursuant to Water Code Section 13385(c) and (e). If the proposed Order is adopted, payment of the mandatory minimum penalty to the State Water Resources Control Board will be due and payable no later than October 10, 2004, in accordance with the Order. If the proposed Order is rejected, the Regional Board may direct the Executive Officer to issue a new complaint and schedule another public hearing. The Regional Board may also decide to continue the matter to a future hearing or refer it to the State Attorney General. The meeting is scheduled to begin at 8:30 A.M.; however, no specific time has been set for consideration of the Order.

PAYMENT OF MANDATORY MINIMUM PENALTY

No later than August 14, 2004, please make your check payable to *State Water Resources Control Board*, and note "MMP Complaint No. R3-2004-0126" on the check. Please mail the check and signed waiver form to:

**SWRCB Accounting
Attn: Enforcement
P.O. Box 100
Sacramento, CA 95812-0100**

Please also mail copies of the check and signed waiver form to:

**Regional Water Quality Control Board
Attn: Matt Thompson
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

⁴ A duly authorized person is defined as a principal executive officer of at least the level of vice president in a corporation, a general partner or the proprietor in a partnership or sole proprietorship, a principal executive officer or ranking elected official in a public agency, or a duly authorized representative.

WAIVER OF THE RIGHT TO A PUBLIC HEARING

- [] By checking this box, I agree to waive the City of San Luis Obispo's right to a public hearing before the Regional Board with regard to the violations alleged in Complaint for Mandatory Minimum Penalty No. R3-2004-0126. I agree to provide payment of the mandatory minimum penalty for the amount proposed in Complaint for Mandatory Minimum Penalty No. R3-2004-0126. I understand that I am giving up the City of San Luis Obispo's right to be heard, and its right to argue against the allegations made by the Executive Officer in Complaint for Mandatory Minimum Penalty No. R3-2004-0126, and against the imposition of, or the amount of, the mandatory minimum penalty proposed.

Signature

Printed Name

Title/Position

Date